IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 84 OF 2002.

Shri Prakash Annappa Badigar,
son of Annappa Badigar,
resident of Khorlim,
Mapusa, Goa. ... Applicants.

VERSUS

1. Smt. Kalindi Vatsala Parsekar.

2. Sanjay Parshekar.

3. Arun Parsekar, all
residing at Angod, Mapusa,
Goa.

4. Raju Parsekar,
residing at Bombay. ... Respondents.

Mr. V. Menezes, Advocate for the Applicant.

Mr. J.P. Mulgaonkar, Advocate for the Respondents No.1 and 2.

CORAM: V. C. DAGA, J.

DATE: 13TH JUNE, 2002.

ORAL JUDGMENT:

Heard.

2. Rule. By consent heard forthwith.

3. The reasons sought to be given by the Trial Court for rejecting the application for amendment is that if it is allowed it would displace the defendant from his original position and would help the plaintiff to fill in the loopholes in the evidence, by taking

advantage of the evidence of surveyor and more particularly of the statements made by surveyor while he was under cross examination. The Trial Court also found that if the evidence is allowed, it would be contradictory.

4. The findings of the trial Court would thus reveal that the trial Court has considered merits of the amendment and proceeded to reject the application moved under Order 6, Rule 17 of C.P.C. As a matter of fact the Trial Court ought not to have dealt with the matter on merits.

5. Having gone through the text of the amendment, I see no reason to refuse to grant the amendment to the plaint. The plaintiff is seeking to reduction in the the area. Apart from this under proviso to sub-section (5) of section 21 of the Specific Relief Act the plaintiff is entitled to amend the suit at any stage of the proceedings so as to set up claim for compensation. In this view of the matter, the Trial Court should have allowed the amendment in question. The refusal to exercise its power suffers from material illegality and irregularity. The refusal on the part of the Trial Court to permit the plaintiff to amend the plaint is bound to cause substantial prejudice to the plaintiff.

In my view amendment needs to be allowed. The statement made by the learned counsel for the petitioner that he does not want to lead any evidence in the matter is taken on record.

6. In the result, the impugned order is quashed and set aside. The Rule is made absolute in terms of prayer clause incorporated in the Civil Revision Application with no order to costs.

(V. C. DAGA)
JUDGE.

sl.